124-459

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. 1154.

THE KING IRON BRIDGE AND MANUFACTURING COMPANY, PLAINTIFF IN ERROR,

vs.

THE COUNTY OF OTOE, STATE OF NEBRASKA.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEBRASKA.

FILED OCTOBER 10, 1887.

SUPREME COURT OF THE UNITED STATES.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, OCTOBER 11, 1887.

1 Pleas before the Honorable Elmer S. Dundy, judge of the district court of the United States for the district of Nebraska, within the eighth judicial circuit, sitting in the circuit court for said district of Nebraska, at the term of May, A. D. 1887.

Be it remembered that on the 27th day of July, 1887, by leave of court first had and obtained, an amended petition was filed in the office of the clerk of said circuit court, which said amended petition is in words and figures following, to wit:

Amended Petition.

In the Circuit Court of the United States for the District of Nebraska.

KING IRON BRIDGE AND MANUFACTURING COMPANY, Plaintiff,

vs.

COUNTY OF OTOE, NEBRASKA, Defendant.

The plaintiff, for a cause of action herein, says that it is a corporation duly incorporated under the laws of the State of Ohio, and as such a citizen of said State.

That the defendant, the county of Otoe, is a quasi corporation duly organized and incorporated under the laws of the State of Nebraska and a citizen of said State.

That the amount in controversy in this suit, exclusive of interest and costs, exceeds the sum of $2,000.00, and for a first cause of action—

(I.) The plaintiff says that at Nebraska city, the county seat of Otoe county, Nebraska, on the 9th day of January, 1879, said county being then justly indebted to one Z. King in the sum of $1,605.00, which indebtedness was at that time due and unpaid, the

2 board of county commissioners of said county, then being regularly in session, did audit, find, allow, adjudge, and determine that there was due to said Z. King in the premises, from said Otoe county, the said sum of $1,605.00, to be paid on account thereof the sum of $1,605.00, and thereupon the said board of county commissioners did allow, draw, and issue to the said Z. King a certain warrant of said county, numbered 649, dated January 9th, 1879, signed by Levi Kime, who was then chairman of said board of county commissioners, countersigned by D. MacCuaig, county clerk of said county of Otoe and the said board, and attested by the seal of said county, which commanded said treasurer to pay to said Z. King, or order, the sum of $1,605.00 out of the general fund and charge to the account of the special bridge fund, a copy of which warrant, with all endorsements thereon, is hereto attached, marked Exhibit "A."

Plaintiff further says that on the 15th day of January, 1879, said warrant was by Z. King presented to the county treasurer and payment thereof demanded. The same was by said treasurer endorsed

"Not paid for want of funds." Afterwards the same said warrant was, on the 26th day of December, 1879, registered for payment, numbered on the register 157.

Plaintiff further says that subsequent to this, but prior to the commencement of this action, the said warrant was by the said Z. King, for a valuable consideration, sold, transferred, and delivered to the plaintiff, who is the lawful holder and owner thereof; that no part of said warrant has been paid by the treasurer of said county, or by any one in its behalf, either to said Z. King or to this plaintiff or to any person whomsoever.

That said defendant has at all times neglected and now does verily neglect and refuse, by levying taxes or otherwise, to pay or to provide for the payment of said warrant or any part thereof,
3 and there is now due said plaintiff thereon the sum of $1,605.00 and ten per cent. interest thereon from the 15th day of January, 1879. Plaintiff further says that at the time of the audit and allowance of said account and the issuance of said warrant the said Z. King was and still is a citizen and resident of the State of Ohio.

Second Cause of Action.

For a second cause of action plaintiff says that at Nebraska City, the county seat of Otoe county, Nebraska, on the 8th day of October, 1878, said county being then justly indebted to one Z. King in the sum of $1,605.00, which indebtedness was at that time due and unpaid, the board of county commissioners of said county then being regularly in session, did audit, find, allow, adjudge, and determine that there was due the said Z. King in the premises from said county the said sum of $1,605.00 to be paid on account of the said sum of $1,605.00; and thereupon the said board of county commissioners did allow, draw, and issue to the said Z. King certain warrants of said county, numbered 622, dated October 9th, 1878, signed by Frederick Beyschlay, who was then chairman of the said board of county commissioners, countersigned by C. MacCuaig, county clerk of said county of Otoe, and attested by the seal of said county, which commanded said treasurer to pay to said Z. King, or order, the sum of $1,605.00 out of the general fund and charge to the account of the "Special Bridge Fund," a copy of which warrant, with all the endorsements thereon, is hereto attached, marked Exhibit "B."

Plaintiff further says that on the 23rd day of October, 1878, said warrant was by said Z. King presented to the county treasurer and payment thereon demanded. The same was by said treasurer endorsed "Not paid for want of funds." Afterwards the same
4 said warrant was, on the 26th day of December, 1878, registered for payment, numbered on the register 156.

Plaintiff further says that subsequent thereto, but prior to the commencement of this action, the said warrant was by said Z. King, for a valuable consideration, sold, transferred, and delivered to the plaintiff, who is the lawful holder and owner thereof; that no part of said warrant has been paid by the treasurer of said county or by

any one in its behalf, either to said Z. King or to this plaintiff, or to any person whomsoever.

Plaintiff further says that Z. King was at the time said warrant was issued and still is a citizen and resident of the State of Ohio, residing at Cleveland, Ohio, and president of the plaintiff's company.

That said defendant has at all times neglected and now does neglect and refuse, by levy of the taxes or otherwise, to pay or to provide for the payment of said warrant or any part thereof, and there is now due the said plaintiff thereon the sum of $1,605.00 and ten per cent. interest thereon from the 23rd day of October, 1878.

Wherefore plaintiff prays judgment for the sum of $3,210.00, together with ten per cent. interest on $1,605.00 thereof from the 23d day of October, 1878, and on $1,605 thereof from the 15th day of January, 1879, together with costs.

HARWOOD, AMES & KELLY,
Plaintiff's Attorneys.

STATE OF NEBRASKA, *Lancaster County,* } ss:

N. S. Harwood, being first duly sworn, deposes and says that he is one of the attorneys of record of the plaintiff in the foregoing cause of action; that he has read the foregoing amended petition, knows the contents thereof, and believes the facts therein set forth to be true; that the plaintiff is a non-resident of this State, and has no agent residing or now in this State.

N. S. HARWOOD.

Subscribed in my presence and sworn to before me this 25th day of July, 1887.

[SEAL.] C. L. HARWOOD,
Notary Public.

EXHIBIT "A."

OFFICE OF COUNTY CLERK,
NEBRASKA CITY, *Jan. 9th*, 1879.

Treasurer of Otoe county pay to Z. King, or order, sixteen hundred and five dollars and charge to account of special bridge fund.

LEVI KIME,
Chairman County Commissioners.

D. MACCUAIG, [SEAL.]
County Clerk.

(Copy.)

Amount levied:	Amount issued:
$8,122.00—$1,605.00.	$7,252.30.

Endorsed: "Presented and not paid for want of funds." January 15th, 1879. N. L. Simpson, county treasurer. Number 157. Reg-

istered for payment, December 26th, 1879. N. L. Simpson, treasurer.

Also endorsed on the back thereof, "Z. King."

EXHIBIT "B."

Am't levied: $8,122.50. Am't issued: $4,106.11.

OFFICE OF COUNTY CLERK,
NEBRASKA CITY, NEBR., *Oct. 9th*, 1878.

Treasurer of Otoe county pay to Z. King, or order, sixteen hundred and five dollars and charge to account of special bridge fund.

FREDERICK BEYSCHLAY,
Chairman County Commissioners.

6 D. McCUAIG, [SEAL.]
County Clerk.

(Copy.)

$1,605.00. Number 622.

Endorsements: "Presented and not paid for want of funds." October 23rd, 1878. N. L. Simpson, Co. treasurer. Number 156. Registered for payment December 26th, 1879. Also endorsed on the back thereof: "Z. King."

Upon the back of said amended petition appear endorsements in words and figures following, to wit: No. 135. Doc. K. King Iron Bridge and Man'f'g Co. *vs.* The County of Otoe, Nebraska. Amended petition. Filed Jul. 27, 1887. Elmer D. Frank, clerk. Harwood, Ames & Kelly, atty's for plaintiff.

Thereupon, afterwards, to wit, on the 11th day of August, 1887, answer was filed in said case, which said answer is in words and figures following, to wit:

Answer to Amended Petition.

In the Circuit Court of the United States for the District of Nebraska.

KING IRON BRIDGE AND MANUFACTURING COMPANY, Plaintiff,

vs.

COUNTY OF OTOE, NEBRASKA, Defendant.

The defendant, in answer to the amended petition of the plaintiff, alleges that the first and second causes of action stated in the amended petition did not accrue within five years next before the commencement of this action.

Wherefore defendant prays that plaintiff recover nothing by its writ and that defendant have judgment and costs.

JOHN C. WATSON,
Attorney for Defendant.

STATE OF NEBRASKA, } ss:
County of Otoe, }

7 William T. Sloan, being first duly sworn, on his oath deposes and says that he is the chairman of the board of county commissioners of Otoe county, Nebraska, and that the facts set forth in the above answer are true.

WM. T. SLOAN.

Subscribed in my presence and sworn to before me this 7th day of August, 1887.

[SEAL.] GEO. D. SCHOFIELD,
Notary Public.

Upon the back of said answer appear endorsements in words and figures following, to wit: No. 135. K. — Circuit court of United States. King Iron Bridge and Manufacturing Company *vs.* Otoe County, Nebraska. Answer to amended petition. Filed Aug. 11, 1887. Elmer D. Frank, clerk. John C. Watson, att'y for defendant.

Thereupon, afterwards, to wit, on the 23rd day of August, 1887, demurrer was filed in said case, which said demurrer is in words and figures following, to wit:

In the Circuit Court of the United States of America, District of Nebraska.

KING IRON BRIDGE AND MANUFACTURING COMPANY, Plaintiff,
vs.
THE COUNTY OF OTOE, NEBRASKA, Defendant.

Now comes the said plaintiff and demurs to the answer of said defendant to plaintiff's amended petition, and for grounds of demurrer alleges that—

1. Said answer does not state facts sufficient to constitute a defense to said plaintiff's amended petition.

2. That by the statutes of Nebraska and the construction
8 given thereunder by the court of Nebraska the statute does not run on against a county warrant.

HARWOOD, AMES & KELLY,
Attorneys for Plaintiff.

Upon the back of said demurrer appear endorsements in words and figures following, to wit: No. 135, Docket K. King Iron Bridge & Manufacturing Company *vs.* County of Otoe. Demurrer. Filed Aug. 23, 1887. Elmer D. Frank, clerk. Harwood, Ames, and Kelly.

Thereupon, afterwards, at the May term of said court, on the 23rd day of August, 1887, the following proceedings were had and done in said cause, as appears of record on folio 360, Journal "M," of said court, to wit:

KING IRON BRIDGE & MANUFACTURING COMPANY
vs.
OTOE COUNTY. } 135 K.

This cause coming on to be heard on the demurrer of the plaintiff to the defendant's answer to the amended petition herein was argued by counsel and submitted to the court, and thereupon, upon consideration thereof, it is now on this day ordered and adjudged by the court that said demurrer be, and the same is hereby, overruled; and it is further ordered and adjudged that said cause be, and the same is hereby, dismissed at plaintiff's costs, taxed at $18.60; to which ruling and order of the court the plaintiff excepts, and on the application of the plaintiff a writ of error is allowed.

Thereupon, afterwards, to wit, on the 9th day of September, 1887, a writ of error was allowed in said case and a citation issued thereon, of which said writ of error and citation the following are the originals:

9 UNITED STATES OF AMERICA, } *ss:*
District of Nebraska, }

The President of the United States of America to the honorable the judges of the circuit court of the United States for the district of Nebraska, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you between King Iron Bridge and Manufacturing Company, plaintiff, and the County of Otoe, State of Nebraska, defendant, a manifest error hath happened to the great damage of the said plaintiff in the said cause, as by complaint appears, we being willing that error, if any hath been, should be duly corrected, and that full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the second Monday of October next, in the said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to laws and customs of the United States, shall be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court of the United States, at Omaha, in said district, this 9th day of September, 1887.

E. D. FRANK, *Clerk.*

Allowed by—
ELMER S. DUNDY, *Judge.*

[Endorsed:] No. 135 K. United States circuit court, district of Nebraska. King Iron Bridge and Manufacturing Co. *vs.* The County of Otoe, Nebraska. Writ of error. Filed Sept. 9, 1887. E. D. Frank, clerk.

10 THE UNITED STATES OF AMERICA, } ss:
District of Nebraska, }

To the county of Otoe, State of Nebraska, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the district of Nebraska, wherein King Iron Bridge and Manufacturing Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at Omaha, this 9th day of September, 1887.

ELMER S. DUNDY, *Judge.*

11 [Endorsed:] No. 135, K. United States circuit court, district of Nebraska. King Iron Bridge and Manufacturing Company *vs.* The County of Otoe, Nebraska. Citation. Filed Sept. 22, 1887. E. D. Frank, clerk.

I hereby accept service of the within notice this 22nd day of September, 1887.

JOHN C. WATSON,
Attorney for Def't in Error.

12 UNITED STATES OF AMERICA, } ss:
District of Nebraska, }

By virtue of the foregoing writ of error and in obedience thereto I, Elmer D. Frank, clerk of the circuit court of the United States for the district of Nebraska, in the eighth circuit, do hereby certify that the foregoing folios, from one to 9, contain true and faithful transcripts of the amended petition, answer to amended petition, demurrer, and order overruling demurrer in the case of King Iron Bridge and Manufacturing Company *vs.* Otoe County, Nebraska, and the whole thereof, and the endorsements thereon, of record and on file in my office as said clerk, and that a copy of the writ of error and citation has been lodged and remains in my said office.

Witness my hand and the seal of said court, at Omaha, this 30th day of September, A. D. 1887.

[Seal United States Circuit Court, District of Nebraska.]

ELMER D. FRANK, *Clerk.*

Endorsed on cover: Nebraska C. C. U. S. No. 1154. The King Iron Bridge & Manufacturing Company, plaintiff in error, *vs.* The County of Otoe, State of Nebraska. Filed October 10, 1887.

IN THE

SUPREME COURT OF THE UNITED STATES.

KING IRON BRIDGE AND MANUFACTURING COMPANY,
Plaintiff in Error.

vs.

THE COUNTY OF OTOE, STATE OF NEBRASKA,
Defendant in Error.

BRIEF FOR PLAINTIFF IN ERROR.

STATEMENT OF CASE.

This is an action brought on two county warrants, which are alleged by the petition (Record, page 1) to have been duly and regularly drawn and issued to the plaintiff's assignor by the proper authorities of defendant, the one on the 9th day of January, 1879, and the other on the 9th day of October, 1878, the former having been presented to the county treasurer for payment on January 15th, 1879, and endorsed by that officer, "Presented and not paid for want of funds," and the latter having been in like manner presented and endorsed on October 23d, 1878, and both of said warrants having been registered for payment by the county treasurer, on December 26th, 1879. This action was begun November 10th, 1885, and the amended petition (Record, page 2) alleges as to each of said warrants "that said defendant has at all times neglected, and now does neglect and refuse,

by levying the taxes or otherwise, to pay, or to provide for the payment of said warrants or any part thereof, and there is now due the plaintiff thereon the sum," etc. The aggregate amount due at the time of beginning the suit being upwards of $5,200.

To this amended petition the defendant filed the following answer (Record, page 4):

"The defendant in answer to the amended petition of the plaintiff, alleges that the first and second causes of action stated in the petition did not accrue within five years next before the commencement of this action.

"Therefore defendant prays that plaintiff recover nothing by its writ and that the defendant have judgment and costs."

To this answer the plaintiff demurred (Record, page 5) as follows:

"1. That said defendant has not stated facts sufficient to constitute a defense to plaintiff's cause of action.

"2. That by the statute of Nebraska, and the construction given by the Supreme Court of Nebraska, the statute of limitations does not run on county warrants."

This demurrer the court, on 23d day of August, 1887, overruled (page 5), and the plaintiff electing to abide by the record, judgment of dismissal and for costs was rendered in favor of the defendant.

ASSIGNMENTS OF ERROR.

The plaintiff assigns for error in this court,

1st. That the Circuit Court erred in overruling the demurrer, and that that court should have sustained the same.

2d. That the Circuit Court erred in dismissing the action, and adjudging costs in favor of the defendant, and that judgment ought to have been rendered in favor of the plaintiff, for the amount of its warrants with interest and costs.

BRIEF.

I.

The statute relied upon by defendant is contained in the "Code of Civil Procedure" of the state, sec. 10, page 532, Compiled Statutes of 1881, and is in the following language:

"Within five years, an action upon a specialty, or any agreement, contract, or promise in writing, or foreign judgment."

It seems to us that it is enough to say that a county warrant is none of these things. It contains no promise, contract, or agreement; recites no consideration, and names or refers to no person in whose favor it assumes to be obligatory, but is a simple direction by one constituted county authority to another to appropriate and pay to the person therein named, a specified sum of public moneys. Neither is it a foreign judgment. Its force and effect are to be gathered from the statutes providing the method in which, and the purpose for which, it may be issued, and directing the time and manner of its payment. These statutes, which were in force when the warrants in suit were issued, and which remain to this day substantially unchanged, may be found on the pages of the General Statutes of Nebraska of 1873, below indicated, and are as below quoted.

Sec. 14, page 234: "The board of county commissioners at any meeting shall have power; * * * "To examine and settle all accounts of the receipts and expenditures of the county, and allow all accounts chargeable against the county; and when so settled, county warrants may be issued therefor as provided by law."

The Supreme Court of Nebraska has repeatedly held that the "allowance of an account or claim against the county under the authority of this statute is the rendition of a judgment, and the statute elsewhere provides for an appeal therefrom, either by the claimant or on behalf of the public, to the District Court for the county, and for its reversal or modification, as in case of appeal from other judgments. "When a demand or claim against a county is presented to the commissioners for settlement, they hear the proofs and determine whether it is one which the county is bound to pay, and the amount due thereon. In this they act judicially, and within the scope of the authority conferred upon them, their decision is a judgment binding upon the county." Opinion by Lake, J., in Brewer vs. Otoe county, 1 Neb., 373.

Sec. 23, page 236: "The commissioner, whose term of office expires within one year, shall be chairman of the board for that year, and he shall sign all warrants on the treasurer for money to be paid out of the county treasury. Such warrants shall be countersigned by the clerk and sealed with the county seal."

Sec. 40, page 249: "Such clerk shall not issue any county warrant unless ordered by the board of commissioners authorizing the same, and every such warrant shall be numbered consecutively, as allowed from the first day of January to the thirty-first day of December in each year, and the date, number, and amount of the same, and the name of the person to whom it is issued, shall be entered in a book, called 'warrant book,' to be kept by the clerk in his office for that purpose."

Sec. 54, page 241: "All warrants issued by the board of county commissioners shall, upon being presented for payment, if there is not sufficient funds in the treasury to pay the same, be endorsed by the treasurer, 'not paid for want of funds,' and the treasurer shall also endorse thereon the date of such presentation and sign his name

thereto. Warrants so endorsed shall draw interest from the date of such endorsement, at the rate of ten per cent per annum until paid."

Sec. 1, page 891: "All warrants upon the state treasurer, the treasurer of any county, or any municipal corporation therein, shall be paid in the order of their presentation therefor."

Sec. 3, page 891: "It shall be the duty of any such treasurer, upon the payment of a fee of ten cents by the holder of any warrant, or by any person presenting the same for registration, in the presence of such person, to enter such warrant in his 'warrant register' for payment in the order of presenting for registration, and upon every warrant so registered, he shall endorse 'registered for payment,' with the date of such registration, and shall sign such endorsement; *Provided*, That nothing in this act shall be construed to require the holder of any warrant to register the same, but such warrant may be presented for payment and endorsed, 'presented and not paid for want of funds,' and shall draw interest from the date of such presentation, as now provided by law."

It follows from the foregoing that a county warrant is in no sense a contract, but is, as the court say in U. P. R. R. Co. vs. Buffalo County, 9 Neb., 449: "A mere certificate of indebtedness, although negotiable in form, as it does not partake of the character of negotiable paper so far as to estop the county from availing itself of any defense it may have against it, even in the hands of a *bona fide* purchaser for value without notice." That is, it is a mere certificate that a judgment has been rendered by the county board in favor of an individual and against the county, and a direction to the county treasurer to pay that judgment to the judgment creditor named in the certificate, or to his order or the bearer. An action, when one is brought like the case at bar, although nominally upon the warrant, is in reality upon the judgment, and this judgment being domestic, not "foreign," is not barred by the statute of limitations above quoted. Undoubtedly

a petition which should recite the issuance of the warrant alone without averring the allowance of the claim or the rendition of the judgment pursuant to which it was issued, would be demurrable as not stating facts sufficient to constitute a cause of action.

II.

It is evident, too, that the Circuit Court erred in supposing that the causes of action accrued upon the presentment of the warrants for payment and the refusal of the treasurer to pay them for want of funds. This precise point was considered and ruled upon by the Supreme Court of Nebraska in Brewer vs. Otoe County, 1 Neb., 373, above cited, the court saying: "Whoever deals with a county, and takes in payment a warrant of the character of these, no time of payment being fixed, does so under an implied agreement that if there be no funds in the treasury out of which it can be satisfied, he will wait until the money can be raised in the ordinary mode of collecting such revenues. He is presumed to act with reference to the actual condition, and the laws regulating and controlling the business of the county. He cannot be permitted, immediately upon the receipt of such warrant to resort to the courts to enforce payment by judgment and execution, without regard to the condition of the treasury at the time, or the laws by which the revenues are raised and disbursed." And in that case, although, as to some of the warrants, more than five years had elapsed between the presentation of the warrants for payment and the beginning of the suit, the action was dismissed as being *prematurely begun*, it not being alleged in the petition in that case as in the one at bar, either that the county was, or had been, in possession of sufficient funds for the payment of the warrants, or that provision therefor had not been made because of the neglect or refusal of the county authorities. At the time this decision was rendered, the statute providing for the registration of warrants and enacting that when registered they should be paid in the order of their presentation, had

not been passed. It is evident from the language of this statute that even if a cause of action has accrued upon a warrant, and the holder presents it for registration, he expressly waives his right of immediate suit and consents to wait until, either in the language of the foregoing opinion, "the money can be raised in the ordinary mode of collecting such revenues," or until the county authorities, having had opportunity to so raise it, have *neglected* or *refused so to do.* The opinion in Brewer vs. Otoe County, supra, was brought to the attention of this court, and received its unqualified approval in Chapman vs. County of Douglas, 107 U. S., 348, and the following language of this court in the latter case applies with equal force to the case at bar: "When that reasonable time expired we have no means of determining. It would depend upon circumstances not disclosed in the record, such as the state of the county treasury, the extent of its other obligations, the value of the taxable property, and its general financial condition." And this court, in the same opinion, quotes with approval the following from the opinion in Brewer vs. Otoe county, supra, viz.: "That the legislature never intended that county warrants should be affected by the limitation act before referred to (quoted supra) is evident, I think, from the whole course of legislation respecting them." If there ever had been any doubts about it the enactment of the registration law above cited would have sufficed for their removal.

III.

The foregoing considerations and authorities appear to us conclusive upon the question involved and sufficient for the reversal of the judgment. It seems to us indeed, that no other argument or authority than Brewer vs. Otoe County, supra, is requisite for that purpose. The circuit court seems to have overlooked the rule that the construction put upon the statutes of a state by its own Supreme Court is obligatory upon the Federal tribunals. It would be intolerable that the enactments of a state legislature should depend for their enforce-

ment upon the accident or opportunity according to which a litigation drawing them in question should be had in the state or Federal courts, or that varying interpretations of such enactments should be dependent upon like circumstances. If such was the case, it may well be doubted if the complications hence arising would not result in the disruption or profound modification of our Federal system. So obvious a fact early attracted the attention of this court, which has repeatedly and uniformly enforced the rule above mentioned. It can scarcely be necessary, even if it is not impertinent, to cite in this court authorities to this effect.

"The interpretation, within the jurisdiction of a state, of a local law becomes a part of that law; as much so as if incorporated in the body of it by the legislature."

Christy vs. Pidgeon, 4 Wall., 196.

"A law of the Confederate Congress, if adopted and enforced as a law of one of the states, should be deemed a law of that state."

Ford vs. Surget, 97 U. S., 594.

"The construction put upon the statute of a state by the courts of that state (will be) followed, although the suit upon the liability created by it be brought in another state."

Flash vs. Conn., 109 U. S., 371.

N. S. HARWOOD,
JOHN H. AMES,
Attorneys for Plaintiff in Error.

Supreme Court of the United States.

OCTOBER TERM, 1887.

No 1154.

KING IRON BRIDGE AND MANUFACTURING COMPANY,

Plaintiff in Error

vs

THE COUNTY OF OTOE, STATE OF NEBRASKA,

Defendant in Error

JOHN C. WATSON,
Att'y for Defendant in Error.

IN THE

SUPREME COURT

OF THE

UNITED STATES.

King Iron Bridge and Manufacturing Company,
Plaintiff in Error.
vs.
The County of Otoe, State of Nebraska,
Defendant in Error.

JOHN C. WATSON, ATT'Y. FOR DEFENDANT IN ERROR.

This suit is based upon two county warrants, properly drawn upon the treasury of the defendant, which were not paid for want of funds to meet the same. The one warrant was issued to Z. King, or order, on the Ninth of October, 1878, for $1,605, and was

presented to the treasurer for payment on the Twenty-third day of October, 1878, and indorsed by the treasurer: "Presented, and not paid for want of funds." The other warrant was issued to the said King on the Ninth of January, 1879, for $1,605, and was presented for payment on the Fifteenth day of January, 1879, and was by the county treasurer duly indorsed: "Presented, and not paid for want of funds." This suit was commenced on the Tenth day of November, 1885. The defendant pleads the statute of limitations, and relies upon that defense alone. The plaintiff demurs to the answer. The court below overruled the plaintiff's demurrer.

The statute of limitations begins to run against a county warrant when it is presented to the proper authority, and indorsed "not paid for want of funds."

Carpenter vs. District Tp. of Union, (Iowa,) 12 N. W. Rep. 280.

Where a town clerk has duly paid an order, and is entitled to credit for it at his next settlement, the statute of limitations begins to run at the date of such settlement.

Dewey vs. Lins, (Iowa,) 10 N. W. Rep. 660.

Prescott vs. Gonser, Iowa, 175.

The plaintiffs in error seem to rely on the case of Brewer vs. Otoe county, 1 Neb. 373.

But we submit that the reasons assigned in that case are not applicable to the case at bar.

In Carrol vs. Board of Police, 28 Miss. 38, it was held that the statute did not run because a county could not be sued, and thus the holding of 1 Neb., *supra*.

The supreme court of Nebraska, in Brewer vs. Otoe county, held that the county could not be sued on the warrants, but that the plaintiffs remedy was by mandamus. In the U. S. courts the plaintiff could not have a mandamus until after judgment. This is another reason why the holding in the case of Brewer vs. Otoe county is not applicable to the case at bar.

In the court below in the case at bar, Judge Dundy delivering the opinion of the court to which Brewer, J., concurred said:

"When a claim against a county has been audited, and warrants have been drawn on the treasery therefor, and such warrants have been accepted by the creditor, he must present them to the

treasury for payment before he can properly sue the county thereon. When presented to the treasurer for payment is refused, the right to sue becomes complete and absolute, and the lawful holder of the warrants can then proceed to have his claim reduced to judgment. There was nothing whatever in the way of Z. King, the payee, or the plaintiff, his assignee, suing on said warrants at that time, and the statute of limitations commences to run as soon as the cause of action accrues. We have this provision in our statute of limitations, on which the defendant relies:

"Civil actions, other than for the recovery of real property can only be brought within the following periods after the cause of action shall have accrued. * * * * Within five years, an action upon a specialty, or any agreement, contract, or promise in writing or foreign judgment." "See Sections 9, 10, pt. 2 Code Civil Proc. Neb."

This suit was commenced nearly seven years after the cause of action accrued. It seems to me to come fully within the provisions of the section of the code above quoted. The action was not brought in time. The statute of limitations is therefore well pleaded. It follows that the demurrer to the answer must be overruled."

King Iron Bridge Co. vs. Otoe County, Fed. Rep. Vol. 27 p. 800.

In the case of Carpenter, Adm't, etc., vs. District Township of Union, in Carrol County, *supra*, the plaintiff as administrator of the estate of William Carpenter, deceased, brought an action upon two warrants, drawn upon J. M. Gilbert, treasurer of the district township of Union, by George Downing, president, in favor of G. W. Hunter, or order. The first of these warrants is dated June 8, 1868, and was presented June 22, 1868, and indorsed: "not paid for want of funds." The other of said warrants is dated July 24, 1868 and was presented September 4, 1868, and indorsed, "not paid for want of funds." On each of these warrants there are several indorsement of payments signed "J. M. Gilbert, Treas." The last indorsement of this kind on each of said warrants bears date February, 28, 1874. The plaintiff's petition was filed on the Sixth day of September, 1880. The defendant demurred to the petition upon the ground that it showed upon the face that the cause of action accrued more than ten years prior to the commencement of this suit. The court sustained this demurrer. The court in holding that the statute of limitations begins to run against a county warrant when it is presented to the proper authority, and indorsed, "not paid for want of funds," said by Day, J.: "The appellant insists that the statute of limitations upon a warrant drawn by a municipal corporation on its own treasurer does not begin to run until the claim is disputed or the payment denied. In support of this position appellant cites

Dillon, Mun. Corp. §412.

The Justices vs. Orr, 12 Ga. 137.

Carrol vs. Board of Police, 28 Miss. 38.

If this position should even be conceded, still it appears that one of the warrants was presented for payment June 22, and the other September 4, 1868, and payment was then denied. It is true the reason of the denial was want of funds, but the reason of the refusal is not, we think, material. Payment was not made when the warrants were presented, and from that time, at least, the statute of limitations commenced to run The action was not commenced until more than 12 years after presentment and refusal of payment, and was therefore barred, unless the bar was removed by some act of the defendant. In *The Justices vs. Orr, supra*, it was held that the statute of limitations did not run against the certificates in question until payment was denied, because they were to be held until funds were in hand for their payment. In *Carrol vs. Board of Police, supra*, it was held that the statute did not run because a county could not be sued. The reasons assigned in these cases are not applicable to the case at bar.

It is claimed that the indorsements of payments on the warrants, signed by the treasurer of the defendant, removed the bar of the statute of limitations. Sec. 2,539, of the code, is as follows:

"Causes of action founded on contract are revived by an ad-

mission that the debt is unpaid, as well as by a new promise to pay the same But as such admission or new promise must be in writing, signed by the party to be charged thereby."

We need not determine whether an indorsement of part payment, signed by the party to be charged, would remove the bar of the statute of limitations. No such indorsement was made in this case. The party to be charged is the district township of Union, a corporation acting through a board of directors. The treasurer of a district township has no authority to bind it by his contracts or admissions. He is not necessarily even a member of the board of directors. Code of 1873, §1,721. The demurrer was properly sustained."

Statutes of limitations are statutes of repose.

Hurley vs. Cox, (Neb.) 2 N. W. Rep. 705.

Letson vs. Kenyon, (Kan.) 1 Pac. Rep. 562.

Taylor vs. Miles, 5 Kansas 499.

Elder vs. Dyer, 26 Kansas 604, and are enacted upon the presumption that one having a well founded claim will not delay enforcing it beyond a reasonable time if he has the power to sue.

The statute of limitations runs for or against counties in the same manner as it does for and against individuals.

Wood on Limitations to Actions, Sec. 53, page 93.

County of St. Charles vs. Powell, 22 Mo. 525.

Evans vs. Erie County, 66 Penn. St. 222.

Baker vs. Johnson Co. 33 Iowa, 151.

Armstrong vs. Dalton, 4 Dev. (N. C.) 568.

County of Lancaster vs. Brenthall, 29 Penn. St. 38.

In the case at bar the demurrer was properly sustained by the court below and should be affirmed here.

This case was before this court at its last term and was then reversed because plaintiff's petition did not show that circuit court

had jurisdiction. The plaintiff amended its petition to show jurisdiction and the cause was tried on demurrer, etc., and court below again held for county. See record.

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